IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5538 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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GORKHA NARBAHADUR BAHADURSING

Versus

STATE OF GUJARAT

Appearance:

MR Sheetal R. Patel for Mr. AJ PATEL
for the Petitioner.
Mr. R.C.Kodekar, ASSTT. GOVERNMENT PLEADER
for Respondent Nos. 1-3.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 19/08/2002

ORAL JUDGEMENT

This petition has been filed for a direction to the respondents to treat the petitioner as having been appointed on permanent basis and give him all

consequential benefits including promotion, seniority and difference of pay, if any.

2. The petitioner was appointed as a watchman by an order dated 2.12.1983 for a period from 20th November, 1983 to 19th December, 1983 and the petitioner was continued to be appointed from time to time on the same post by giving artificial breaks of a day or two. The petitioner has filed details of his work from 19th November, 1983 to 1st August, 1987 to show that the petitioner has worked for more than 240 days in a year. But the respondents had given artificial breaks for one or two days with a view to see that the petitioner should not become a permanent employee of the respondents, which is arbitrary and violative of fundamental rights under Article 14 of the Constitution of India. It is also asserted that the petitioner was allowed to work till 29th August, 1987. Thereafter, he was not permitted to work. The learned counsel for the petitioner makes a statement that the petitioner has worked from 28th November, 1983 to 5th September, 1983 even after 29th August, 1987. The petitioner was not allowed to work and he was given false assurances that he will be taken back. Hence, the petitioner made a representation to the concerned authorities. When he could not make his job, he has filed the present petition.

2. Heard the learned counsel for the petitioner and the learned Assistant Government Pleader for the respondents. The contention of the learned counsel for the petitioner is that the petitioner was appointed on the basis of 29 days appointment. He has completed 240 days and other persons similarly situated like the petitiner have been absorbed and so his fundamental rights have been violated.

3. It is also stated by the learned counsel for the petitioner that on 3rd September, 1998, a leter was issued to him by the authority concerned requiring the petitioner to furnish certain certificates and that was the last opportunity given to him and the petitioner has already submitted those papers, but his case has not been considered properly by the respondent authorities and the authorities have ignored the case of the petitioner in absorbing the petitioner in service.

4. On the other hand, the learned Assistant Government Pleader submitted that it is not possible for the department to give any appointment to the petitioner at this stage because the persons allegedly similarly

situated have been absorbed, but their cases were quite different and some of them belonged to SC community sweeper class and on the basis of certain Government Resolutions, their services were required to be regularised. Hence, the petitioner cannot claim the benefits given to certain other persons and the petitioner's case is quite different than that of the persons who have been already absorbed. The Government has passed a Resolution dated 26th August, 1987 whereby 10% employment has been reduced and that GR has been continued and now the subsequent GR has been issued on 18th May, 2002 wherein 20% posts have been reduced. Two posts of watchman have already been abolished. There is no vacancy of watchman in the department concerned. Therefore, the petitioner cannot be re-employed in the respondent department.

5. The contention of the learned Assistant Government Pleader is that the petitioner was appointed in a stop-gap arrangement on the basis of 29 days appointment. Therefore, he has not acquired any legal right. Hence, the petition is liable to be dismissed. No doubt, he has worked for a period of about 9 years, but that was only in the stop-gap arrangement. So, the petitioner cannot be re-appointed or absorbed inthe department.

6. I have carefully considered the rival contentions of the learned counsel for the parties. At this stage, the learned counsel for the petitioner submits that the petitioner intends to file a representation before the concerned authority to satisfy the department that he is eligible and one post is still vacant and therefore, his case can be considered for regularisation or re-employment. In the facts and circumstances, the petitioner is directed to make a fresh representation to the authority concerned within a period of six weeks from today with all necessary certificates or documents in support of his claim. If the petitioner makes such a representation within stipulated period, the authority concerned will decide the same within a period of two months from the date of receipt thereof in accordance with law. With these observations, this petition stands disposed of. Rule is discharged with no order as to costs.

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